IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 93 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RUPLA JOTIYA

Appearance:

MR BY MANKAD, Ld. APP for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 07/11/2000

ORAL JUDGEMENT

Shri B.Y.Mankad, learned APP for the petitioner. Revision-Opponent absent though duly served.

2. This is a Criminal Revision Application filed by the State Government under Section 397 of the Criminal Procedure Code, 1973 (In short `Cr.P.C.') challenging the

correctness, legality and propriety of an order dated 27th March, 1992, passed by the learned Additional Sessions Judge, Panchmahals at Godhra, below Exh.26 in Sessions Case No.202 of 1991.

3. The facts leading to this Criminal Revision Application in a nutshell are as follows:

3.1 That one Sessions Case bearing Sessions Case No.202 of 1991 is being proceeded against the present respondent who is accused in that case. That case is being proceeded for offence punishable under Section 376 of the I.P.C. It appears from record that prosecution has examined 10 witnesses in the case. Thereafter on 27th March, 1992, the learned APP who was in charge of that case submitted an application Exh.26 requesting the Court to recall witness No.10 L.B. Bihola. That application has been rejected by stating reason of only one line that Shri Bihola has deposed about report of Doctor of Dohad. This reason assigned by the learned Additional Sessions Judge appears to be not clear as to what he wanted to convey by that report of the Doctor of Dohad received by Shri Bihola.

3.2 Afterall, the nature of an offence was serious one as accused was facing trial under Sec.376 of IPC. As per application Exh.26, witness No.10 Shri L.B.Bihola had deposed in para 5 of his deposition that, he had received a report from Doctor of Dahod on the next day and he had gone through that report. He also deposed that on reading that report, it revealed that, there were injuries on private part of victim and it was noticed that rape was committed on the victim. It appears from record that, because this witness has admitted for medical report having been received by him from Doctor of Dohad, the prosecution wanted to lead some further evidence with regard to that report and for that purpose prosecution requested the Court to recall that witness.

3.3 The learned Judge of the trial Court has not tried to understand the importance of evidence on that score because Mr.Bihola has admitted that he did receive the medical report from Doctor of Dohad, and infact if that report was received by him, that report ought to have been placed on the record of the case. Under the circumstances, it was very much necessary for the Prosecution to recall that witness. The learned Judge of the trial Court has not assigned any plausible reason for rejecting the said application.

3.4 Under the circumstances, the order cannot be said

to be a proper one. When Prosecution wanted to lead some evidence in support of its case through this witness, though he had already been examined, prosecution cannot be estopped from leading better and relevant evidence. In view of this, order challenged in this application cannot be said to be correct and proper.

4. During the course of arguments, Shri Mankad, learned APP for the petitioner has made it clear that Prosecution wanted to recall that witness P.W.10 L.B.Bihola on the point of evidence led in para 5 of his deposition. In view of this, this Criminal Revision Application deserves to be allowed, and it is accordingly allowed. An order dated 27th March, 1992, passed below Exh.26 in Sessions Case No.202 of 1991 is set aside. The Prosecution is permitted to recall witness P.W.10 L.B.Bihola. The learned Judge of the trial Court is directed to permit Prosecution to re-examine P.W.No.10 L.B.Bihola as per third part of Sec.138 of the Indian Evidence Act, 1872. As the Sessions Case No.202 of 1991 is about 9 years old case, the learned Judge of the trial Court is directed to expedite the trial of the case at the earliest and dispose of it within three months from the date of receipt of writ of this Court, by affording full opportunity of being heard, to both the parties.

5. With the aforesaid directions, this Criminal Revision Application is allowed. Rule is made absolute.

(H.H. Mehta, J.)

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